



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 2, 1997

Mr. Joe B. Hairston  
Walsh, Anderson, Underwood,  
Schulze, & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR97-2631

Dear Mr. Hairston:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110982.

The Comal Independent School District (the "school district") received a request for information regarding a teacher. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.102, 552.114 of the Government Code, section 21.355 of the Education Code, the informer's privilege, and common-law privacy. We have considered the exceptions you claim and reviewed the submitted information.

We first consider your assertion that the informer's privilege protects a portion of the submitted information from public disclosure. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. The Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. Where statements evidence no wrongdoing or violation of law, they are not protected by the informer's privilege. Open Records Decision No. 549 (1990); *and see* Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by the informer's privilege). We do not believe that the informer's privilege applies here, as the

complaints appear to be of an administrative nature rather than of criminal conduct. Therefore, you may not withhold any of the submitted information based on the informer's privilege.

Section 552.101 encompasses common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, *writ ref'd n.r.e.*). Consequently, we will consider these two exceptions together. In *Industrial Foundation*, the court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

You contend that the teacher has a privacy interest in some of the material contained in his personnel records. We also must consider whether any of the information contained in these records implicates the privacy interests of other individuals. We note that information about the qualifications of public employees is of legitimate concern to the public. Open Records Decision Nos. 542 (1990), 470 (1987), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). After reviewing the submitted information, we conclude that the information is not excepted from disclosure by common-law privacy under sections 552.101 and 552.102.

You also assert that some of the submitted information is excepted from disclosure pursuant to section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code. Section 21.355 provides that "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that one of the documents, which we have marked, is a document that evaluates the performance of a teacher or administrator, and therefore, must be withheld from disclosure.

The submitted records include the teacher's college transcripts. You state that you have released a portion of these records to the requestor, but you claim that the remainder must not be disclosed pursuant to section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, with the exception of the degree obtained and the curriculum. We therefore agree that, prior to releasing the transcripts, the school district must redact from the transcripts all information other than the employee's name, the degree obtained, and the courses taken. Open Records Decision No. 526 (1989) at 2-3.

In addition, you argue against disclosure of some of the submitted records under sections 552.026 and 552.114 of the Government Code. The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, *without the necessity of requesting an attorney general decision as to that exception.*

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Pursuant to FERPA, you have submitted de-identified copies of the requested information. However, we note that the

submitted records contain other identifying information that may reveal or tend to reveal information about a student; we have marked the information that must be withheld pursuant to FERPA.

Finally, we note that the submitted information contains information that may be deemed confidential under section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/glg

Ref.: ID# 110982

Enclosures: Submitted documents

cc: Mr. Jack W. Stamps  
Office of Investigations and Enforcement  
State Board for Educator Certification  
1001 Trinity  
Austin, Texas 78701-2603  
(w/o enclosures)